

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 24, Page 4, Section 67.1020, Line 4, by
2 inserting after all of said Section and Line the following:

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4 "67.5104. 1. As used in this section, "pole attachment" means an attachment by a video
5 service provider, or by a telecommunications or other communications-related service provider to a
6 pole owned by a municipal utility, but not an attachment by a wireless communications provider to a
7 pole.

8 2. Any pole attachment fees, terms, and conditions, including those related to the granting or
9 denial of access, demanded by a municipal utility pole owner or controlling authority of a
10 municipality shall be nondiscriminatory, just and reasonable and shall not be subject to any required
11 franchise authority or government entity permitting, except as provided in this section. A pole
12 attachment rental fee shall be calculated on an annual, per pole basis. Such rental fee shall be
13 considered just and reasonable if it is agreed upon by the parties or, in the absence of such
14 agreement, based on cost but in no such case shall such rate so calculated be greater than the rate
15 which would apply if it were calculated in accordance with the cable service rate formula referenced
16 in 47 U.S.C. Section 224(d) as applied by the Federal Communications Commission, except as
17 permitted by subsection 3 of this section.

18 3. Either party may seek review of any fee, term, or condition by means of binding
19 arbitration conducted by a single arbitrator mutually agreeable to the parties or, in the absence of
20 such agreement, by means of binding arbitration conducted by the American Arbitration
21 Association. An arbitrator's award regarding fees shall be confined to ensuring that the utility pole
22 owner recovers the direct costs and an appropriate share of the fully allocated costs of the pole
23 attachment and that the rate may exceed the cable service rate formula referenced in this section only
24 if based on an express written finding stated in the award that such award is based on clear and
25 convincing evidence that the cable rate formula and other payments made by the service provider do
26 not sufficiently recover the direct costs and an appropriate share of the fully allocated costs of the
27 pole attachment. In addition, a municipal pole owner may be authorized to exceed the rate of return
28 cost components of the Federal Communications Commission formula referenced in this section
29 only as allowed under article X, of the Constitution of Missouri. Pending the arbitrator's rendering
30 of such an award, the last existent rental fee applicable to the pole attachment shall remain in place
31 and shall be binding upon both parties.

32 4. The provisions of this section shall not supercede existing pole attachment agreements
33 established prior to August 28, 2013.

34 5. Nothing in this section shall be construed as conferring any jurisdiction or authority on the
35 public service commission to regulate the fees, terms, or conditions for pole attachments, or as
36 permitting any state agency to assert jurisdiction or authority to regulate pole attachments under
37 Section 224 of the Communications Act of 1934, as amended."; and

Action Taken _____ Date _____

- 1 Further amend said bill by amending the title, enacting clause, and intersectional references
- 2 accordingly.